

in sufficient technical detail to enable classification by BXA.

(2) You must complete Blocks 1 through 5, 14, 22(b)(c)(d) and (i) (enter your recommended classification information in these blocks), 24 and 25 on the application when submitting a Classification request. If you are requesting BXA to classify an item for which precise specifications are identified in §748.8 of this part, these specifications must be addressed in, or attached to, your application. Consult §738.2 of the EAR for guidance on classifying items on the Commerce Control List.

(3) Classification requests for a one-time Department of Commerce review of encryption software transferred from the U.S. Munitions List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date are required prior to export to determine eligibility for release from EI controls. Refer to Supplement No. 6 to part 742 for instructions on submitting such requests for mass market encryption software. For requests for Key Escrow, Key Recovery, or Recovery encryption products, include the word “Encryption” in Block 24: Additional Information.

(c) *Advisory Opinions.* Advisory Opinions must be submitted in writing to the address listed in §748.2(c) of the EAR. Both your letter and envelope must be marked “Advisory Opinion.”

(1) Your letter must contain the following information if you are requesting guidance regarding interpretations of the EAR:

(i) The name, title, and telephone and facsimile numbers of the person to contact,

(ii) Your complete address comprised of street address, city, state, country, and postal code; and

(2) If you are requesting BXA to determine whether a license is required, or the licensing policy related to a particular end-use, end-user, and/or destination, in addition to the information required in §748.3(c)(1) you must also include:

(i) All available information on the parties to the transaction and the proposed end-use or end-user,

(ii) The model number for each item, where appropriate,

(iii) The Export Control Classification Number, if known, for each item; and

(iv) Any descriptive literature, brochures, technical specifications or papers that describe the items in sufficient technical detail to enable BXA to verify the correct classification.

[61 FR 12812, Mar. 25, 1996, as amended at 61 FR 68585, Dec. 30, 1996]

§748.4 Basic guidance related to applying for a license.

(a) *Disclosure and substantiation of facts on license applications.* You, as the applicant, are required to make the complete disclosure of all parties in interest to the transaction so that BXA may decide on the license application with the fullest knowledge of all relevant facts. If the license application is filed for an account other than that of the applicant, the agent, as applicant must disclose the name of the agent’s principal. Where there is any doubt as to which of several persons should be named as a party to the license, you must disclose the names of all such persons and the functions to be performed by each in Block 24 on your application or an attachment to your license application.

(b) *Applications for the export of items from the United States.* A license application to export items from the United States may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by the applicant’s duly authorized agent. This limitation does not apply to applications for the reexport of items previously exported. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.

(c) *Prohibited from applying for a license.* No person convicted of a violation of any statute specified in section 11(h) of the Export Administration Act, as amended, at the discretion of the Secretary of Commerce, may apply for any license for a period up to 10 years from the date of the conviction. See §766.25 of the EAR.

(d) *Prior action on a shipment.* If you have obtained a license without disclosure of the facts described in this section, the license will be deemed to have been obtained without disclosure of all facts material to the granting of the license and the license so obtained will be deemed void. See part 764 of the EAR for other sanctions that may result in the event a violation occurs.

(1) *Licenses for items subject to detention or seizure.* If you submit a license application for items that you know have been detained or seized by the Office of Export Enforcement or by the U.S. Customs Service, you must disclose this fact to BXA when you submit your license application.

(2) *Licenses for items previously exported.* You may not submit a license application to BXA covering a shipment that is already laden aboard the exporting carrier, exported or reexported. If such export or reexport should not have been made without first securing a license authorizing the shipment, you must send a letter of explanation to the Office of Export Enforcement, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., H4520, Washington, D.C., 20230. The letter must state why a license was not obtained and disclose all facts concerning the shipment that would normally have been disclosed on the license application. You will be informed of any action and furnished any instructions by the Office of Export Enforcement.

(e) *Multiple shipments.* Your license application need not be limited to a single shipment, but may represent a reasonable estimate of items to be shipped throughout the validity of the license. Do not wait until the license you are using expires before submitting a new application. You may submit a new application prior to the expiration of your current license in order to ensure uninterrupted shipping.

(f) *Second application.* You may not submit a second license application covering the same proposed transaction while the first is pending action by BXA.

(g) *Resubmission.* If a license application is returned without action to you by BXA or your application represents a transaction previously denied by

BXA, and you want to resubmit the license application, a new license application must be completed in accordance with the instructions contained in Supplement No. 1 to part 748. Cite the Application Control Number on your original application in Block 24 on the new license application.

(h) *Emergency processing.* If you believe an emergency situation beyond your control necessitates expedited processing of your license application, you should contact BXA's Exporter Counseling Division of the Office of Exporter Services. This office may be reached by telephone on (202) 482-4811 or by facsimile on (202) 482-3617. These procedures do not apply to emergency handling of Special Comprehensive License applications.

(1) *How to request emergency handling.* If your license application is already pending with BXA, contact the Exporter Counseling Division directly on either number listed in paragraph (h) of this section. If you have not yet submitted your license application, include a written letter with the title "Emergency Handling Request" with your license application. The letter must include:

(i) A justification for the request, supported, where appropriate, with copies of orders, communications, or other documentation to substantiate that your request constitutes a valid emergency. You may be specifically requested to supply other documents not included with your submission.

(ii) An acknowledgement by you that any license issued under these emergency procedures will have a limited validity period as described in § 750.7(g) of the EAR, and that it generally will not be extended.

(2) *Prompt delivery of emergency handling requests.* You are responsible for prompt delivery of your request and license application to BXA. You may hand-carry your request and license application or use the services of an overnight courier to ensure prompt delivery. If you desire to hand-carry your request and license application, you may hand deliver it to the Exporter Counseling Division at the address stated in § 748.2(a) of this part. If you decide to use an overnight courier, use the address listed in § 748.2(c) of this

part. The envelope containing your license application should be labeled “Attn: Exporter Counseling Division, Emergency Handling Request Enclosed”.

(3) *Review of emergency handling requests.* BXA views an emergency as an unforeseeable situation over which you have no control. On the day of receipt, BXA will evaluate your license application and decide whether emergency handling is warranted. Frequent emergency request will be given particularly close scrutiny. This procedure is not designed to become a substitute for timely filing of license applications.

(4) *Action on license applications processed under emergency procedures.* If you have submitted an emergency request, you will be contacted by the Exporter Counseling Division informing you of whether or not your request for emergency processing has been granted. If your license is approved under emergency handling procedures, you will be notified by BXA of the approval by telephone or in person. You will be given the license number and verbal authorization to effect shipment immediately, without waiting for the actual license. Any license approved under these emergency handling procedures will have a limited validity period as described in § 750.7(g) of the EAR.

§ 748.5 Parties to the transaction on a license application.

(a) *Applicant.* (1) The “applicant” is defined as the person who, as the principal party in interest in the transaction, has the power and responsibility for determining and controlling the exporting or reexporting of the items. BXA is primarily concerned with the identity of the applicant and the applicant’s role in the transaction, and not the terms of sale.

(2) Ordinarily, a seller who delivers items in the United States to a foreign buyer, or to the latter’s forwarder or other agent, would not be in a position to assume responsibility for the export and would not be a proper applicant. This would normally be the situation where sale is made f.o.b. factory, although such terms of sale may relate only to price and are not necessarily inconsistent with the assumption by the seller of full responsibility for

effecting the export or reexport. The seller can still be liable if the seller knows that the importer or its agent will not obtain the required license.

(3) If the seller intends to leave the responsibility for effecting an export or reexport in the hands of the foreign importer or the latter’s forwarding or purchasing agent in the United States, the foreign importer should apply for the license in the foreign importer’s own name if the foreign importer is subject to the jurisdiction of the United States at the time of export. Otherwise, the importer’s forwarding or purchasing agent or other person subject to the jurisdiction of the U.S. must appear as applicant and exporter. In this situation you, as the applicant, must disclose your role as agent and the name of your principal.

(b) *Order party.* The order party is that person in the United States who conducted the direct negotiations or correspondence with the foreign purchaser or ultimate consignee and who, as a result of these negotiations, received the order from the foreign purchaser or ultimate consignee.

(c) *Purchaser.* The purchaser is that person abroad who has entered into the transaction with the applicant to purchase an item for delivery to the ultimate consignee. A bank, freight forwarder, forwarding agent, or other intermediary is not the purchaser. The purchaser and ultimate consignee may be the same entity.

(d) *Intermediate consignee.* The intermediate consignee is the bank, forwarding agent, or other intermediary (if any) who acts in a foreign country as an agent for the exporter or re-exporter, the purchaser, or the ultimate consignee, for the purpose of effecting delivery of the export or reexport to the ultimate consignee.

(e) *Ultimate consignee.* The ultimate consignee is the person located abroad who is the true party in interest in actually receiving the export for the designated end-use. A bank, freight forwarder, forwarding agent, or other party, when acting as an intermediary, is not acceptable as the ultimate consignee.